

APPLICANTS:
Joseph & Dina Cavallaro

REQUEST: A variance to allow a deck
within the recorded easement in the
Village Residential District

HEARING DATE: January 8, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5574

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Joseph Cavallaro

CO-APPLICANT: Dina Cavallaro

LOCATION: 36 North Forest Drive – North Forest Subdivision, Forest Hill
Tax Map: 33 / Grid: 4D / Parcel: 421 / Lot: 14
Third (3rd) Election District

ZONING: VR / Village Residential

REQUEST: A variance, pursuant to Section 267-26C(6) of the Harford County Code, to allow a deck to be located within a recorded easement in the Village Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants wish to build an attached deck to the rear of their home. They own an approximately quarter acre, Village Residential zoned parcel located in the North Forest Subdivision of Harford County. The parcel, which is improved by an attractive, two-story home with an attached two car garage, slopes “fairly steeply” from the front to the back of the lot. The lot, in fact, has such a steep slope downward that the basement is a walk-out.

According to Joseph Cavallaro, Co-Applicant, the sloping nature of the lot would make it difficult for the Applicants to construct a set of steps to a deck either to the rear of the deck or to the southeast, or right, side of the house. A set of steps in either location would require an extra level because of the slope, which falls downward away from the house and any deck which would be built there. Because of this concern the Applicants have decided to construct a deck to the rear but also extending slightly beyond the northwest side of the house. The proposed deck and stair construction is adequately shown on Applicant's site plan in the file. This would allow steps to come out toward the street. This area has a grade consistent with the front yard of the property and would allow a simple set of steps having eight risers to be constructed.

Case No. 5574 – Joseph & Dina Cavallaro

While this would appear to be a simple solution, the subject parcel is, however, encumbered by a 30 foot drainage and utility easement on the side of the lot on which the steps would be constructed. Mr. Cavallaro stated that this is an unusually large drainage and utility easement as most of the lots in his subdivision are encumbered by 10 foot drainage and utility easements only. Mr. Cavallaro submitted a series of subdivision plats of portions of his subdivision which he asserted demonstrate his contention that the 30 foot drainage and utility easement is unusual for his subdivision.

Also exacerbating the Applicants situation is a feature of the home itself. The house contains a “bump out” on the northwest side, the side on which the steps would be constructed. This “bump out” is necessitated by a fireplace in the Applicants’ home. Because of the “bump out” the steps cannot be located directly next to the home, but must be somewhat off-set. The steps are also required to be 4 feet wide by the Harford County Building Code. These factors together require, as a result, a portion of the steps and a very small portion of the deck to impact the 30 foot drainage and utility easement. This impact is 1 foot, at most.

The Harford County Department of Public Works has submitted an e-mail transmittal, dated October 18, 2006, in which it states the Department has no objection to the requested variance, provided any relocation of the deck due to future Harford County construction within the easement will be at the owners’ expense.

The Applicants have also received approval from their Homeowners Association for the construction of the proposed deck.

The Harford County Department of Planning and Zoning finds that the subject property is unique;

“The lot slopes fairly steeply from the front to the back of the house. The lot also has an unusual rear property line configuration due to the Natural Resource District to the back of the lot. Most of the drainage and utility easements are only 10 feet wide. However, a 30 foot easement has been recorded between Lots 13 and 14.”

The Department recommends the requested variance be approved.

No evidence or testimony was given in opposition.

Case No. 5574 – Joseph & Dina Cavallaro

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

Section 267-26C(6) of the Harford County Code states:

“(6) No accessory use or structure, except fences, shall be located within any recorded easement area.”

Case No. 5574 – Joseph & Dina Cavallaro

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants are requesting a relatively minor variance which, if granted, should be virtually unnoticeable.

The Applicants desire to construct a deck to the rear of their home. The deck would certainly be no different from many others throughout Harford County. Because of the relatively steep slope of the Applicants' lot, which has necessitated a walk-out basement, a set of stairs to access the deck from the rear would require at least one landing and would be somewhat difficult and expensive to construct. A solution would be to construct a set of stairs to the deck at the side of the house, where the topography is the same as the front yard and street. The topography, being virtually level at that area, will allow a more normal set of steps, one having eight risers. Unfortunately for the Applicants, an approximately 2 foot bump out on the side of their home, combined with a 30 foot drainage and utility easement to the side, result in the Applicants being unable to meet the 4 foot stair width requirement of the Harford County Building Code without the requested variance.

The variance requested, as noted, is a very slight one, one which will allow the steps to conform with the Harford County Building Code and create an encroachment of no more than 12 inches into the 30 foot drainage and utility easement.

The Harford County Department of Public Works has expressed no problem with this impact. The Harford County Department of Planning and Zoning has similarly expressed no objection and has also suggested that the property is unique. No neighbor testified in opposition and the pertinent community association has given its approval. There is no reason to believe the requested variance will adversely impact any neighbor or property in the area.

Accordingly, it is found that Applicants suffer a practical difficulty due to the unique features of their property in that they are unable to construct a set of steps to a deck similar to others in the neighborhood. This difficulty can be relieved by the granting of the variance requested. The granted variance will have no adverse impact on any adjoining property owner or property, and is the minimum relief necessary to alleviate the difficulty.

Case No. 5574 – Joseph & Dina Cavallaro

CONCLUSION:

It is accordingly recommended that the requested variance be granted, subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for a deck.
2. If Harford County determines that the structure is to be moved in the future, the deck and stairs will be relocated at the owners' expense.

Date: January 16, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 13, 2007.